

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5966 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GHANCHI SHAHIDBHAI CHHOTUBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/10/2000

ORAL JUDGEMENT

The petitioner-detenu has by filing this writ petition under Article 226 of the Constitution of India challenged the legality and validity of order of detention dated 17.4.2000 (Annexure-A) passed by the respondent no. 2 in respect to detenu in exercise of

his powers conferred under sec. 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

As per the case of the detaining authority the petitioner-detenu is a 'dangerous person' within the meaning of section 2(c) of the Act and, that his activities are prejudicial to the maintenance of public order. Before passing the order of detention to arrive at subjective satisfaction, the detaining authority has placed reliance on 4 different cases punishable under the provisions of IPC which are referred to in grounds of detention. The detaining authority has also placed reliance on the statements 4 witnesses whose identity has not been disclosed by claiming privilege under section 92) of the Act. As per the case of the detaining authority, such statements of 4 witnesses were recorded on 24.3.2000. That statements were verified by the detaining authority on 15.4.2000 and he passed the order of detention on 17.4.2000, which is challenged in this writ petition.

Though rule has been issued upon each of the respondents but none of the respondent has filed affidavit in reply, in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging the order of detention, which is the subject matter of this writ petition.

Smt. Subhadraaben Patel learned advocate for the petitioner has argued that in this case, the detaining authority who has relied on 4 statements which were verified on 15.4.2000 by putting endorsement of words "verified the contents". This short cut method of putting an endorsement itself shows that the detaining authority has not applied its mind for verification of the statements. She has placed reliance on case of Zakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana and Ors., reported in 1996(1) GLH p 300. Looking to the facts of that case, the detaining authority had only put an endorsement in form of one word "verified" below each of the statements of such witnesses. In that case, this Court held that the claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and, therefore, the order of detention was held to be illegal and detenu was ordered to be released. Herein in this case also, the detaining authority has put endorsement of "verified the contents" below each of the statements of witnesses. Therefore, the claim of detaining authority for privilege under sec.

9(2) of the Act is not genuine and, therefore, the order of detention is ex-facie, bad in law and the same is required to be quashed and set aside.

In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 17.4.2000 passed by the respondent no. 2 in respect of detenu is quashed and set aside. The detenu is ordered to be released forthwith, if he is not required in any custody for any criminal case or proceeding. Rule is made absolute. DS permitted.

(H.H. MEHTA, J.)
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